

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ELIZABETH KERWIN, Regional  
Director Seventh Region of the National  
Labor Relations Board, for and on  
behalf of THE NATIONAL LABOR  
RELATIONS BOARD,

Petitioner,

vs.

STARBUCKS CORPORATION,

Respondent.

Case No.: 5:24-cv-10093

Hon. Judith E. Levy

Mag. Judge David R. Grand

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Elizabeth Kerwin, Regional Director  
NATIONAL LABOR RELATIONS  
BOARD, Region 7  
477 Michigan Avenue, Room 300  
Detroit, Michigan 48226

Steven E. Carlson (P58196)  
NATIONAL LABOR RELATIONS  
BOARD, Region 7  
110 Michigan Street, NW, Room 299  
Grand Rapids, Michigan 49503  
Telephone: 616.930.9160  
steven.carlson@nlrb.gov

*Attorneys for Petitioner*

Jeffrey S. Hiller (OH #0081533)  
LITTLER MENDELSON, P.C.  
41 South High Street, Suite 3250  
Columbus, Ohio 43215  
Telephone: 614.463.4201  
jhiller@littler.com

Adam Paul Tuzzo (WI #1089623)  
LITTLER MENDELSON, P.C.  
111 East Kilbourn Avenue, Suite 1000  
Milwaukee, Wisconsin 53202  
Telephone: 414.291.5536  
atuzzo@littler.com

*Attorneys for Respondent*

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**RESPONDENT'S MOTION TO STAY**

Respondent Starbucks Corporation (“Starbucks”) moves the Court to stay this action pending the outcome of the United States Supreme Court’s decision in *Starbucks Corp. v. McKinney*, 23-367. On May 1, 2024, Starbucks conferred with Petitioner’s counsel to seek Petitioner’s concurrence in this motion, which Petitioner declined on May 3, 2024.

## **BRIEF IN SUPPORT OF MOTION TO STAY**

In *Starbucks Corp. v. McKinney*, 23-367, the United States Supreme Court held oral argument on Tuesday, April 23, 2024. That case will decide the appropriate standard for this Court to apply in a Section 10(j) petition, including whether to apply the traditional four-factor test under *Winter v. NRDC*, 555 U.S. 7 (2008). That case may also bear upon what deference, if any, district courts should give to National Labor Relations Board (“Board”) determinations of facts or legal theories when deciding Section 10(j) petitions. A decision is anticipated in late June 2024.

In *McKinney v. Starbucks Corp.*, 77 F.4th 391, 397 (6th Cir. 2023), the Sixth Circuit applied its two-factor test for Section 10(j) cases. But this two-factor test fails to appropriately account for the public interest or the balance of equities and alters the standards for the likelihood of success on the merits and irreparable harm factors. During oral argument at the Supreme Court, counsel for the Board conceded that the four equitable factors should apply and agreed “that the real question in dispute is whether the likelihood of success inquiry is ratcheted down somewhat,” as well as how the other three factors are applied.

[https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2023/23-367\\_hfci.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/23-367_hfci.pdf) at pp. 60-61.

Further, in *McKinney*, the Sixth Circuit declined to engage in fact-finding:

In reviewing the supporting facts, a district court may not resolve conflicting evidence or make credibility

determinations. *Muffley ex rel. NLRB v. Voith Indus. Servs., Inc.*, 551 F. App'x 825, 830 (6th Cir. 2014); *see Ahearn*, 351 F.3d at 237 (“[F]act-finding is inappropriate in the context of a district court’s consideration of a 10(j) petition.”).

*McKinney*, 77 F.4th at 397. But at the Supreme Court, the Board conceded “that statement on its own is” wrong and “we agree that some fact-finding is permissible.”

[https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2023/23-367\\_hfci.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/23-367_hfci.pdf) at pp. 41-42.

The applicable standard will also guide the scope of discovery, which this Court is presently considering based on the two-factor test. If the Supreme Court rules in Starbucks’ favor and instructs that a four-factor test should apply, then such a ruling could broaden the scope of permissible discovery and interim efforts to take written discovery and depose witnesses may need to be revisited to account for broader fact-finding on the merits and discovery regarding the public interest and balance of equities factors. The Court should await the Supreme Court’s guidance on the correct legal standard to avoid repetition and waste of the non-parties’, parties’, and Court’s resources.

Starbucks’ motion to stay should be granted for the reasons set forth above.

Dated: May 6, 2024

/s/ Jeffrey S. Hiller

Jeffrey S. Hiller (OH #0081533)  
LITTLER MENDELSON, P.C.  
41 South High Street, Suite 3250  
Columbus, OH 43215  
Telephone: 614.463.4230  
Facsimile: 614.573.7475  
jhiller@littler.com

Adam Paul Tuzzo (WI #1089623)  
LITTLER MENDELSON, P.C.  
111 East Kilbourn Avenue, Suite 1000  
Milwaukee, Wisconsin 53202  
Telephone: 414.291.5536  
atuzzo@littler.com

Attorneys for Starbucks Corporation

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document was served upon all parties and/or attorneys of record to the above cause herein at their respective addresses as disclosed on the pleadings on May 6, 2024, via:

\_\_\_\_ U.S. Mail  
X ECF Filing  
\_\_\_\_ E-Mail

\_\_\_\_ Facsimile  
\_\_\_\_ Hand Delivery  
\_\_\_\_ Federal Express

/s/ Jeffrey S. Hiller

Jeffrey S. Hiller